



U.S. Department  
Of Transportation  
**Federal Highway  
Administration**

*Statewide  
programmatic  
agr.*

**Utah Division**  
2520 West 4700 South, Ste. 9A  
Salt Lake City, UT 84118-1847

June 12, 2007

File: Section 4(f) *De Minimis*

Mr. Wilson Martin  
State Historic Preservation Officer  
Division of State History  
300 South Rio Grande Street  
Salt Lake City, Utah 84101

**Subject:** Section 4(f) De Minimis Determination; Pursuant to SAFETEA-LU Section 6009  
In Conjunction with Section 106 Programmatic Agreement Among the Federal Highway  
Administration, the Advisory Council on Historic Preservation, the Utah State Historic  
Preservation Officer, and the Utah Department of Transportation

Dear Mr. Martin:

This letter was prepared in response to the FHWA December 13, 2005 Guidance regarding Section 6009 (a) of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity: A Legacy for Users (SAFETEA-LU) Act Pub. L. 109-59. Section 6009 allows increased flexibility with respect to minor transportation impacts to Section 4(f) properties, including historic properties. It simplifies the processing and approval of federally funded transportation projects that have a *de minimis* impact on lands protected by Section 4(f). For historic properties, a finding of *de minimis* impact on a historic site may be made by the FHWA when Section 106 consultation results in the *written* concurrence of the SHPO with the determination of "no adverse effect" or "no historic properties affected".

Public Law 109-59 (SAFETEA-LU) has no new Section 106 implications other than the requirement for written SHPO concurrence with Section 106 findings of effect for individual Section 4(f) properties. It does require FHWA to notify the SHPO of FHWA's intent to utilize the finding of "no historic properties affected" or "no adverse effect" for individual Section 4(f) properties as a basis for making a Section 4(f) *de minimis* use finding.

The December Guidance offers two specific points of relevant direction:

**Question B. How should the concurrence of the SHPO and/or THPO, and ACHP if participating in the Section 106 determination, be documented when the concurrence will be the basis for a *de minimis* finding?**

**Answer:** Section 4(f) requires that the SHPO and /or THPO, and ACHP if participating, must concur in writing in the Section 106 determination of "no adverse effect" or "no historic properties affected." The request for concurrence in the Section 106 determination should include a statement informing the SHPO or THPO, and ACHP if participating, that the FHWA or FTA intends to make a *de minimis* finding based upon their concurrence in the Section 106 determination.

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Under the Section 106 regulation, concurrence by a SHPO and/or THPO may be assumed if they do not respond within a specified timeframe, but Section 4(f) explicitly requires their written concurrence. It is recommended that transportation officials share this guidance with the SHPOs and THPOs in their States so that these officials fully understand the implication of their concurrence in the Section 106 determinations and the reason for requesting written concurrence.

**Question C. Certain Section 106 programmatic agreements (PAs) allow the lead agency to assume the concurrence of the SHPO and/or THPO in the determination of "no adverse effect" or "no historic properties affected" if response to a request for concurrence is not received within a period of time specified in the PA. Does such concurrence through non-response, in accordance with a written and signed Section 106 PA, constitute the "written concurrence" needed to make a *de minimis* finding?**

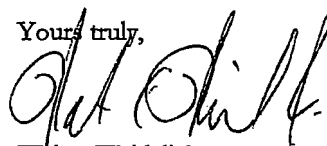
**Answer:** In accordance with the provisions of a written and signed programmatic agreement, if the SHPO and/or THPO does not respond to a request for concurrence in the Section 106 determination within the specified time, the non-response together with the written agreement, will be considered written concurrence in the Section 106 determination that will be the basis of the *de minimis* finding by FHWA or FTA.

FHWA or FTA must inform the SHPOs and THPOs who are parties to such PAs, in writing, that a non-response that would be treated as a concurrence in a "no adverse effect" or "no historic properties affected" determination will also be treated as the written concurrence for purposes of the FHWA or FTA *de minimis* use finding. It is recommended that this understanding of the parties be documented by either appending the written notice to the existing PA, or by amending the PA itself.

According to 2005 Guidance, by transmittal of this letter, the FHWA is notifying your office of FHWA's intent to make the Section 4(f) *de minimis* use finding for properties where a determination of no historic properties affected (no effect), or no adverse effect have been concurred in by your office or when your office has not replied within the appropriate timeframe with written concurrence.

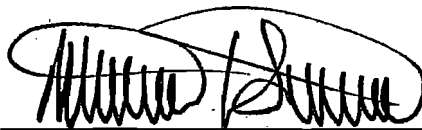
By the following signature, the SHPO acknowledges it has been notified of the intent of the FHWA to make a *de minimis* finding based on Section 106 determinations of effect for specific properties.

Yours truly,



Walter Waidelich  
Division Administrator

Concurrence:



~~Wilson Martin~~, State Historic Preservation Officer

7/19/02

Date

**Matthew T. Seddon, RPA  
Deputy State Historic  
Preservation Officer**